

## Internal Revenue Service

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Date:  
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### Legend

Entity E =

Plan =

:

This responds to your authorized representative's original letter and subsequent correspondence, on behalf of governmental Entity E and its section 457 plan, requesting a ruling concerning its deferred compensation plan (the "Plan") which E intends to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code of 1986 (the "Code"), as amended under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and in subsequent legislation. The Plan has been or will be adopted only by E, which is represented to be an eligible governmental employer described in section 457(e)(1)(A) of the Code.

Under the Plan a participant who is currently an employee of E may elect to defer compensation that would have been received for services rendered to E in any taxable year until death or severance from employment. In addition, the Plan authorizes E to permit in-service distributions of certain amounts rolled over into the Plan from other eligible retirement plans, in accordance with and pursuant to the requirements of Notice 2004-67, 2004-2 C.B. 376, including maintaining these rollovers in separate accounts.

Under the Plan, the amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457(b), including the section 457(c) coordinated deferral provision.

The Plan provides for a maximum amount that may be deferred by a participant in any taxable year. It also provides for a catch-up computation for amounts deferred for one or more of the participant's last three taxable years ending before he or she attains normal retirement age under the Plan. The Plan also provides for the age 50 plus catch-up contributions under sections 414(v) and 457(e)(18). However, the Plan provides that a participant can only utilize one of the two catch-up contribution provisions during a single year. The amounts that may be deferred under the annual maximum limitation and the catch-up provisions are within the limitations of section 457(c).

A participant's election under the Plan to defer compensation must be filed prior to the beginning of the month in which the compensation to be deferred would have been paid.

With certain limitations, a participant or a beneficiary (including an alternate payee) may elect the manner in which their deferred amounts will be distributed. The Plan provides that the manner and time of benefit payout must meet the distribution requirements of sections 401(a)(9) of the Code.

The Plan provides that any amount of compensation deferred under the Plan is to be transferred to and held in a trust, annuity contract or custodial account described in section 457(g), for the exclusive benefit of the participants and their beneficiaries. The rights of any participant or beneficiary to payments pursuant to the Plan are generally nonassignable and not subject to transfer, assignment or attachment.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan as defined in section 457(b).

Section 457(a)(1)(A) of the Code provides that in the case of a participant in an eligible governmental deferred compensation plan, any amount of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable year in which such compensation or other income is paid to the participant or beneficiary. Section 457(b) provides that the term "eligible deferred compensation plan" means a plan established and maintained by an eligible employer in which only individuals who perform service for the employer may be participants and which meet the deferral limitations described in section 457(c); which meets the distribution requirements described in section 457(d); which provides for deferral elections described in section 457(b)(4); and, in the case of a governmental plan, which requires the plan assets and income to be held in trust for the exclusive benefit of participants and beneficiaries as described in section 457(g).

Section 457(b)(5) prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d).

Section 457(d)(1)(A) provides that for a section 457 plan to be an eligible plan, the plan must have distribution requirements providing that under the plan amounts will not be made available to participants or beneficiaries earlier than i) the calendar year in which the participant attains age 70½, ii) when the participant has a severance from employment with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations.

Section 457(e)(1)(A) defines an eligible employer to be a state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state.

Section 457(g) provides that a plan maintained by an eligible governmental employer shall not be treated as an eligible deferred compensation plan unless all assets and rights purchased with such deferred compensation amounts and all income attributable to such amounts, property, or rights of the plan are held in trust, for example in custodial accounts or annuity contracts that are described in section 401(f), for the exclusive benefit of participants and their beneficiaries.

Based upon the provisions of the Plan summarized above and the documents presented, we conclude as follows:

1. The Plan constitutes an eligible deferred compensation plan as defined in section 457(b) of the Code as amended under EGTRRA and subsequent statutes.
2. Amounts of compensation deferred in accordance with the Plan, including any income attributable to the deferred compensation, will be includible under section 457(a)(1)(A) in the recipient's gross income only for the taxable year or years in which amounts are paid to a participant or beneficiary in accordance with the terms of the Plan.
3. Assuming that the custodial accounts and annuity contracts used for the accumulation of assets under the Plan meet the requirements of section 401(f), the trust under the Plan and the related custodial accounts and annuity contracts used under the Plan are treated under section 457(g) as a trust that is treated as an organization exempt from taxation under section 501(a).

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than E's above

described Plan. If the Plan is significantly modified, this ruling may not necessarily remain applicable.

This ruling is directed only to the Plan and not to any other section 457(b) plan, and it applies only if E revises the Plan originally submitted on July 1, 2008, with the amendments submitted on September 25, 2008. Section 6110(k)(3) of the Internal Revenue Code provides that this ruling may not be used or cited as precedent.

Sincerely,

Cheryl Press  
Senior Counsel, Qualified Plans Branch 2  
(Employee Benefits)  
(Tax Exempt & Government Entities)

Enclosure: (1)